

REMARKS/ARGUMENTS

Initially, Applicant would like to express his appreciation to the Examiner for the detailed Official Action which indicates that the drawings filed on November 24, 2003 and amended in the September 21, 2007 Amendment have been accepted. Claims 1-18 are currently pending, and this Response makes no amendments to the specification, drawings or claims. Applicant respectfully requests reconsideration of the outstanding rejections, and allowance of all the claims pending in the present application.

SUMMARY OF THE OFFICE ACTION

In the Official Action, the Examiner has made another provisional non-statutory double patenting rejection based upon co-pending patent application SN 10/704,715 in view of BRANTH (U.S. Patent No. 7,075,928). The Examiner has finally rejected claims 1-13 under 35 U.S.C. § 103(a) as being unpatentable over ZHENG et al. (U.S. Patent No. 6,611,522) in view of DiMAMBRO et al. (U.S. Pub. No. 2004/0143781) and further in view of DRAKE, Jr. et al. (U.S. Patent No. 6,895,024). Claims 14-18 have been finally rejected under 35 U.S.C. § 103(a) as being unpatentable over WILLIS (U.S. Patent No. 6,909,720) in view of DiMAMBRO et al. and further in view of DRAKE, Jr. et al. Applicant respectfully traverses all of the above rejections.

THE PROVISIONAL NON-STATUTORY DOUBLE PATENTING REJECTION

The Examiner made a similar provisional non-statutory double patenting rejection based upon co-pending patent application SN 10/704,715 in the previous Official Action. As pointed out in the September 19, 2007 Amendment, since none of the claims of the present application or of SN 10/704,715 have been determined to be allowable, Applicant again respectfully requests

that the Examiner hold the provisional non-statutory double patenting rejection in abeyance, until the allowability of the claims is determined. Since the final scope of the claims in either application has not yet been determined, such rejection is submitted to be premature. Applicant will consider submitting a Terminal Disclaimer, if necessary, to overcome the provisional non-statutory double patenting rejection, once the final form of the claims has been determined (i.e., claims indicated to be allowable).

THE REJECTION OF CLAIMS 1-13 UNDER 35 U.S.C. § 103(a)

The Examiner rejected claims 1-13 under 35 U.S.C. § 103(a) as being unpatentable over ZHENG et al. in view of DiMAMBRO et al. and further in view of DRAKE, Jr. et al. Applicant respectfully traverses the rejection of claims 1-13. As explained in the September 14, 2007 Amendment, ZHENG et al. is substantially cumulative of the prior art illustrated in FIG. 1 of the present application. DiMAMBRO et al. is directed to a system and method for performing non-intrusive loopback *testing* in a communication device. *See*, the Abstract of DiMAMBRO et al., and it is clear that DiMAMBRO et al. is directed to the *testing* of a communications device and not re-routing of a circuit, if there is a failure. In the most recent Office Action, DRAKE, Jr. et al. has been added to the combination of ZHENG et al. and DiMAMBRO et al. to overcome the deficiencies in the combination of ZHENG et al. and DiMAMBRO et al. However, Applicant respectfully submits that DRAKE, Jr. et al. does not cure the deficiencies of the previously asserted hypothetical combination of ZHENG et al. in view of DiMAMBRO et al.

DRAKE, Jr. et al.

In order to cure the above noted deficiencies, the most recent Official Action cites DRAKE, Jr. et al. and asserts that DRAKE, Jr. et al. “. . . shows the step to re-route a circuit if there is a failure in an interface. . .” (See, page 6 of the Official Action). The most recent Official Action further asserts, “A loopback connection 50 is installed in each fabric 46” (See also, page 6 of the Official Action). While both of these assertions are correct, it is respectfully submitted that the loopback connection 50 does not provide a re-routing of a circuit if there is a failure in the circuit. The loopback connection 50 of DRAKE, Jr. et al. is used for loopback *testing*, (see col. 4, lines 48-52), and it is therefore, substantially cumulative of DiMAMBRO et al. Moreover, the re-routing of the circuit in DRAKE, Jr. et al. is performed by redundant switches or paths (see col. 7, lines 15-21 of DRAKE, Jr. et al.), instead of the loop-back or connection and the non-redundant layer two and layer three switches of Applicant’s claimed invention of independent claims 1 and 8. (See also Fig. 3A of the present application). In addition to the non-redundant switches of claim 1, Applicant claims redundant switches in dependent claims 5-7 which are features additional to the non-redundant switches of claim 1

Applicant respectfully submits that if the skilled artisan were to combine the teachings of DRAKE, Jr. et al. with the teachings of ZHENG et al. and DiMAMBRO et al., the resulting combination would simply be the addition of DRAKE, Jr. et al.’s redundant switches/paths and loop-back connection 50 to the combination of ZHENG et al. and DiMAMBRO et al. The re-routing of the circuit would be through the redundant switches/paths of DRAKE, Jr. et al, and the re-routing would not be through the loop-back connection of either DRAKE, Jr. et al or DiMAMBRO et al. In the hypothetical combination asserted in the Official Action, the loop-

back connections of DRAKE, Jr. et al and DiMAMBRO et al. would perform diagnostic testing and not the rerouting of a circuit, as clearly recited in independent claims 1 and 8. Accordingly, it is respectfully submitted that the hypothetical combination asserted in the Official Action would still not result in the Applicant's invention as recited in independent claims 1 and 8, and that independent claims 1 and 8 are patentable over the hypothetical combination of ZHENG et al. in view of DiMAMBRO et al. and further in view of DRAKE, Jr. et al.

THE REJECTION OF CLAIMS 14-18 UNDER 35 U.S.C. § 103(a)

The Examiner rejected claims 14-18 under 35 U.S.C. § 103(a) as being unpatentable over WILLIS in view of DiMAMBRO et al. and further in view of DRAKE, Jr. et al. On page 12 of the Official Action, the Examiner acknowledges that, "WILLIS does not show a physical loopback and the step wherein a circuit is re-routed, if there is a failure in the interface between a layer two switch and the platform." In order to cure this deficiency in WILLIS, the Official Actions cites DiMAMBRO et al. and DRAKE, Jr. et al. and repeats substantially the same arguments that were used to reject independent claims 1 and 8 over the combination of ZHENG et al. in view of DiMAMBRO et al. and further in view of DRAKE, Jr. et al. (See the last paragraph of page 12 and the top of page 13 of the Official Action.)

Applicant respectfully submits that DiMAMBRO et al. and DRAKE, Jr. et al. fail to cure the deficiencies of WILLIS for the same reasons that DiMAMBRO et al. and DRAKE, Jr. et al. fail to cure the deficiencies of ZHENG et al. In other words, in the hypothetical combination of WILLIS in view of DiMAMBRO et al. and further in view of DRAKE, Jr. et al., the loop-back connections of DRAKE, Jr. et al and DiMAMBRO et al. would perform diagnostic testing and not the rerouting of a circuit, as clearly recited in independent claim 14. Accordingly, it is

respectfully submitted that the hypothetical combination asserted in the Official Action would not result in Applicant's invention as recited in independent 14, and that independent claim 14 is patentable over the hypothetical combination of WILLIS in view of DiMAMBRO et al. and further in view of DRAKE, Jr. et al.

DEPENDENT CLAIMS 2-7, 9-13 AND 15-18

With regard to dependent claims 2-7, 9-13 and 15-18, Applicant asserts that they are allowable because of their additional recitations, and at least because they depend, directly or indirectly, from independent claims 1, 8 and 14, respectively, which Applicant submits have been shown to be allowable. Accordingly, Applicant respectfully requests reconsideration of the outstanding rejections and an indication of the allowability of all of the claims in the present application.

CONCLUSION

Applicant submits that the present application is in condition for allowance, and respectfully requests an indication to that effect.

If any extension of time is necessary, this is an express request for any necessary extension of time and authorization to charge any required extension of time fee or any other fees which may be required to preserve the pendency of the present application to Deposit Account No. 19-0089.

Any amendments to the claims which have been made in this Reply, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to

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have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attached thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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